STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

ILLINOIS BELL TELEPHONE COMPANY	)	**ICC DOCKET NO. 00-0393**
Proposed Implementation of High Frequency Portion of Loop (HFPL)/Line Sharing Service.	)	

AT&T'S PETITION FOR CLARIFICATION AND REHEARING

AT&T Communications of Illinois, Inc. ("AT&T") hereby submits its Petition for Clarification and Rehearing of the Order issued by the Illinois Commerce Commission ("Commission") in the above matter on March 14, 2001 ("Order"). AT&T submits this Petition for Clarification and Rehearing pursuant to Section 10-113 of the Illinois Public Utilities Act and Section 200.880 of the Illinois Administrative Code.

AT&T requests that the Commission grant rehearing on three of the conclusions adopted by the Commission in its Order. First, AT&T requests that the Commission grant rehearing on its conclusion that the Eighth Circuit's decisions in *IUB I* and *IUB III* somehow preclude this Commission from requiring Ameritech Illinois to provide new combinations of network elements. Order, p. 52. As demonstrated below, the concept of line splitting does not require Ameritech to combine network elements since the splitter is not a UNE and adding splitter functionality to an existing loop and port combination leaves that combination intact. Moreover, even assuming for the sake of argument that line splitting did require Ameritech to provide "new combinations of network elements" as used by the Order (i.e., where the network elements are not already presently

combined in Ameritech's network), the Fifth and Ninth Circuit Courts of Appeal and numerous state commissions, including several in the Ameritech region, have determined that the Eighth Circuit's decisions in *IUB I* and *IUB III*, while they do not *require* ILECs such as Ameritech to provide new combinations of network elements, certainly do not *prohibit* state commissions from requiring ILECs such as Ameritech to provide new combinations of network elements.

AT&T also requests rehearing or, more appropriately, clarification on the issue of Ameritech's obligation to permit CLECs to engage in line splitting using their own splitters to bolster the Order's language so as to avoid disagreements in the future. Finally, AT&T requests that the Commission grant rehearing on it conclusion that Ameritech need not provide the splitter as a part of the unbundled loop in order to satisfy its obligation under federal law to provide CLECs, including AT&T, with *nondiscriminatory access to* the full features, functions and capabilities of the unbundled loop.

I. INTRODUCTION

The issue of whether Ameritech is required to provide combinations of network elements was not ripe for determination in this proceeding because under no factual scenario does ordering Ameritech to engage in line sharing to allow CLECs to engage in line splitting require Ameritech to provide a new combination of network elements. Even if it did, the Commission's conclusion that federal law preempts it from ordering Ameritech to provide new combinations has potentially far-reaching and anti-competitive impacts well beyond the reach of DSL-related service. While this case relates to Ameritech's provision of DSL service and its related obligations, the competitive impact

of this Commission's conclusion on new combinations, stated simply, will have a much broader and devastating impact upon the future of competition in Illinois.

Imagine, for example, an Illinois residential customer who has reading and hearing about the federal Act of 1996, which introduced the concept of local exchange competition. That customer looks forward to the day it can finally choose a local exchange provider. After waiting for over six years (or more, depending upon when competition in the Illinois local market takes hold), that Illinois customer finally has a choice of local providers in Illinois. That customer chooses CLEC A for local exchange service, and CLEC A serves that customer by purchasing network elements from Ameritech and serving the customer via the UNE-Platform. Happy with the quality of service and customer care it receives, the customer calls CLEC A and asks for a second line for its on-line needs. CLEC A must notify the customer that it needs to contact Ameritech for that second line. Ameritech, of course, stands ready, willing and able to provide that second line. So much for local competition. And who does the customer blame? CLEC A, of course – the company that is unable to meet its needs. Surely that customer will not be interested in CLEC A for any additional services, and may even decide to take its primary line back to Ameritech.

This chain of events is not only possible, but is *likely* under the Commission's Order. The fact that this chain of events would bring local competition to a screeching halt for many of the state's residential and small business lines is particularly ironic since the Order causing it was issued by the very Commission that paved the road to competition by creating the UNE-Platform in the first instance. To effectively serve customers using UNE-Platform combinations (i.e., loop, port and transport) that are not

already connected in Ameritech's network, CLECs must go to another state because the Order does not allow them to do it here. The practical effect of the Order, then, is to limit the CLECs' use of the Platform to serve those customers currently being served by Ameritech.

In sum, this case is ***crucial*** to the future of local competition for residence and small business customers. The Commission's Order is not only erroneous as a matter of fact and as a matter of law, but it also prejudges – and unnecessarily -- the important policy determination on UNE combinations generally that is presently pending in Phase II of the TELRIC case, ICC Docket No. 98-0396. The CLECs there have urged the Commission to rule that it may and that it should, notwithstanding the *IUB* decisions in another federal circuit, require Ameritech to provide them at a minimum with access to combinations of elements of the kinds that it "ordinarily combines" in its network to serve retail customers. This is the minimum standard that satisfies the incumbent LEC's obligation to provide "nondiscriminatory" access to network elements under §251(c) of the Act. In all events, for the Illinois Commerce Commission -- which can rightly claim credit for originating the UNE Platform in 1996[1] -- to now limit it (as Ameritech wishes) so as to effectively preclude the use of UNE-P for new customers and new lines would be a damaging result and a harmful signal to CLECs in Illinois and to the CLEC industry across the nation. To prejudge that result by its decision in this case would be a serious mistake, and for the reasons discussed below it is unnecessary to a ruling in this docket.

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[1] *Petition for a total local exchange wholesale service tariff from Illinois Bell Telephone Company d/b/a Ameritech Illinois and Central telephone Company pursuant to Section 13-505.5 of the Illinois Public Utilities Act,* Order, ICC Docket No. 95-0458/0531 (Consol.), p. 55 (June 26, 1996) ("Wholesale Order").

Thus, AT&T requests that the Commission grant rehearing on the issue of new combinations in this docket to eliminate the Order's conclusions on new combinations of network elements and to reserve ruling on the issue until it is presented for review in ICC Docket No. 98-0396.

Also at issue in this case is the basis upon which Ameritech will make the wholesale elements of xDSL available to competitors in the data and voice CLEC markets. As set forth below, the portions of the Order to which AT&T takes exception relate to "line splitting." Line splitting is the circumstance in which a competitive carrier provides voice service to the customer using the UNE Platform combination and the low frequency portion of the UNE loop, and either itself or in partnership with another data CLEC provides the data service using the high frequency portion of the loop.[2] AT&T and other voice CLECs must be able to compete with Ameritech in local residential markets by offering a package of high-speed internet access service using xDSL along with UNE-Platform based voice service. Indeed, if competing UNE-P based CLECs are unable efficiently to offer customers the high speed data portion of this package, they will be seriously impeded in – if not effectively cut off from – this fastest-growing segment of the local residential market.

The Order as it relates to line splitting over UNE-P loops is a dramatic departure from this Commission's long and distinguished record of supporting local competition in Illinois. It also represents an aberration from the trend of decisions on this issue across the nation. The New York, Texas and Massachusetts Commissions have all ordered line

[2] "Line sharing" is the term used where a data CLEC gains access to the high frequency portion of the loop to provide data service, but the incumbent LEC – i.e., Ameritech – continues to provide the voice service.

splitting in UNE-P arrangements via an ILEC-owned splitter,[3] as have the Michigan, Wisconsin and Indiana Commissions in arbitrations between AT&T and Ameritech in this region.[4] The Commission's Order, if it stands as currently drafted, would emerge as a minority on this important contemporary issue of competitive policy.

Not only does the Order represent a misguided policy decision; it rests on an erroneous legal basis as well. It finds that line splitting cannot be required consistent with the Eighth Circuit's decisions concerning UNE combinations in the *Iowa Utilities Board* cases,[5] and also cites a decision by the federal district court for the Western

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[3] *New York Verizon Petition for Reconsideration of DSL Order – New York Attorney's Opposition*, Case No. 00-C-0127 (December 18, 2000); *Order On Motions For Reconsideration, Clarification, Extension Of Time, And Extension Of Judicial Appeal Period, And Request For Reexamination Of Compliance Filing*, Massachusetts D.T.E. 98-57-Phase III-A, at 55 (January 8, 2000); *Petition of Southwestern Bell Telephone Company for Arbitration with AT&T Communications of Texas, L.P., etc.*, Docket No. 22315, Public Utility Commission of Texas, Revised Arbitration Award, at 18-19 (September 27, 2000) and *Order Approving Revised Arbitration Award* dated March 14, 2001.

[4] *Petition for Arbitration to Establish an Interconnection Agreement Between Two AT&T Subsidiaries, AT&T Communication of Wisconsin, Inc. and TCG Milwaukee, and Wisconsin Bell, Inc, etc.*, Docket No. 05-MA-120, Arbitration Award, pp. 21-22 (October 12, 2000) ("Wisconsin AT&T/Ameritech Arbitration Award"); *AT&T Communications of Indiana, Inc. TCG Indianapolis Petition for Arbitration of Interconnection Rates, Terms and Conditions and Related Arrangements with Indiana Bell Telephone Company, etc.*, Cause No. 40571-INT-03, Order, pp. 45-47 (November 20, 2000) ("Indiana AT&T/Ameritech Arbitration Order"). The Michigan arbitration panel approved line splitting. *In the matter of the application of AT&T Communications of Michigan, Inc., and TCG Detroit for arbitration of interconnection rates, terms, and conditions and related arrangements with Ameritech Michigan, etc.*, Cause No. U-12456, Opinion and Order, pp. 12-13 (November 20, 2000). The MPSC in its order deferred the issue to another pending docket in which it was investigating line splitting. In March, 2001, the MPSC issued an order in that docket requiring Ameritech Michigan to provide splitter functionality for line splitting, and Ameritech Michigan has not petitioned for rehearing on that conclusion.

[5] *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997) ("IUB I"); *aff'd in part, rev'd in part sub nom. AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366 (1999) ("IUB II"); Iowa Utils. Bd. v. FCC, Nos. 96-3321 et al (8th Cir., July 18, 2000)("IUB III").

District of Michigan.[6] The Order ignores three decisions of the Ninth Circuit Court of Appeals and one from the Fifth Circuit that decline to follow the Eighth Circuit on this issue,[7] and neither the Eighth Circuit's decisions nor the singular District Court ruling from Michigan are binding on the Illinois Commerce Commission or controlling in this case.[8] In the recent rulings in arbitrations between AT&T and Ameritech cited above, the commissions in Wisconsin and Indiana rejected the same arguments made by Ameritech here and adopted wholesale in the Order.

Further, the Order adopts as a factual premise that the splitter functionality is *itself* a UNE, such that line splitting entails a new UNE "combination." It proceeds to hold, as noted above, that the Eighth Circuit's rulings in *IUB I* and *IUB III* are controlling, and that those decisions preempt this Commission from requiring "new" combinations. To the contrary, splitters are not network elements but rather fall within the FCC's existing rules that require incumbent LECs to provide competing carriers with access to unbundled loops in a manner that allows the competing carrier "to provide any telecommunications service that can be offered by means of that network element"[9] as well as within the statutory definition of a network element (here, the loop) that includes "features, functions, and capabilities that are provided by means of such facility or

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[6] *Verizon North v. Strand*, No. 5:98-CV-38 (W.D.Mich. Dec. 5, 2000).

[7] See *U S WEST Communications v. Hamilton*, Nos. 99-35586 et al., 2000 WL 1568707 (9th Cir. 2000); *MCI Telecomms. Corp. v. U S WEST Communications*, 204 F.3d 1262, 1268 (9th Cir. 2000), *cert denied*, 69 U.S.L.W. 3332 (U.S. Nov. 14, 1000)(No. 00-214); *U S WEST Communications v. MFS Intelenet, Inc*., 193 F.3d 1112 (9th Cir. 1999), *cert. denied*, 120 S.Ct.2741 (2000)[resting on the conclusion that the Eighth Circuit misinterpreted Section 251 (c)(3) of TA96]; see also *Southwestern Bell Tel. Co v. Waller Creek Communications, Inc*., 221 F.3d 812, 821 (5th Cir. 2000)[concluding that states have the authority to impose combinations requirements regardless of whether the Eighth Circuit decisions were correct].

[8] The Eighth Circuit's rulings on "combinations" are now pending before the U.S. Supreme Court, which on January 22, 2001, granted Petitions for Certiorari filed by the FCC and AT&T.

[9] *Id.*; see 47 C.F.R. §51.307(c).

equipment."[10] Hence, even if the decisions of the Eighth Circuit on combinations were (erroneously) viewed as binding, they do not preclude or preempt line splitting.

Hence, for the reasons set forth more fully below, AT&T requests that the Commission grant AT&T's Petition for Rehearing to modify its Order to eliminate its conclusions concerning UNE combinations and to reserve ruling on that issue until the TELRIC proceeding, to detail Ameritech's obligation to permit CLECs to engage in line splitting with CLEC-owned splitters, and to require Ameritech to provide splitter functionality to allow CLECs to engage in line splitting.

II. THE ORDER ERRONEOUSLY CONCLUDES AS A MATTER OF FACT AND AS A MATTER OF LAW THAT ADDING SPLITTER FUNCTIONALITY TO SEPARATE LOOP FREQUENCIES CONSTITUTES A "NEW COMBINATION" AND THAT THE COMMISSION IS PRECLUDED BY FEDERAL LAW FROM REQUIRING AMERITECH TO PROVIDE "NEW COMBINATIONS."

While the Order does not expressly conclude that adding splitter functionality to separate the high frequency portion of the loop (used for data services) from the low frequency portion of the loop (used for voice services) constitutes a "new combination of network elements", it implicitly does so by erroneously concluding that "under the Eighth Circuit's decision in IUB I and IUB III, Ameritech Illinois cannot be required to provide new combinations of network elements." Order, p. 52. This finding is incorrect both as a matter of fact and as a matter of law. Moreover, the issue of whether Ameritech is required to provide CLECs with combinations of network elements that it "ordinarily combines" in its network for itself and for its end users need not and should not be decided here.

[10] 47 U.S.C. § 153(29).

A. Inserting Splitter Functionality Does Not Constitute Providing CLECs With A New Combination Of Network Elements.

First, the Order's conclusion on new combinations is factually incorrect because adding splitter functionality to an already existing loop and port combination -- *regardless of whether the ILEC or the CLEC provides the splitter* -- does not require Ameritech to provide a "new combination" of network elements. Rather, it entails adding splitter *functionality* to the loop element of the UNE-Platform. While Ameritech Illinois and many Illinois CLECs, including AT&T, disagree as to whether state commissions (including this one) can require Ameritech to combine for CLECs network elements that Ameritech "ordinarily combines" for itself and its end users, even Ameritech agrees that it is required to provide CLECs with all features and functionalities of the UNE loop element. Inserting splitter functionality does not magically transform the pre-existing loop and port combination into some form of "new combination" of network elements since, as Ameritech and AT&T agree and as the Commission has already determined in ICC Docket Nos. 00-0312/0313, the splitter is not a network element. No new elements are used or added. Thus, adding splitter functionality cannot, as a matter of fact, constitute a "new combination" of network elements.

The Order's conclusion must be premised, then, on the fact that an existing loop (or loop and port combination) may be momentarily physically separated to provide the splitter functionality, assuming the splitter functionality is not already there. This process does not result in a "new combination" of network elements, though, because when the process is complete AT&T (and other UNE-Platform CLECs) still receives the same pre-existing loop. In sum, the loop and port combination AT&T receives from Ameritech after line splitting – regardless of whether the ILEC, the CLEC or the data CLEC owns

the splitter, is the *same* loop (or loop and port combination) that already exists in Ameritech's network – a fact even Ameritech cannot and does not dispute.

The factual inaccuracies of the Order's conclusion are highlighted even further in the case of a CLEC engaging in line splitting using its own splitter or a splitter provided by the data CLEC. In that scenario, Ameritech does not combine any network elements for the CLEC. To the contrary, the CLEC combines the individual network elements it receives from Ameritech in its own collocation space using its own equipment. Because Ameritech *does not combine* the network elements *at all*, there is absolutely no factual basis for the Order to conclude that requiring Ameritech to provide line splitting requires it to provide new combinations of network elements. Thus, the Order's implicit finding that line splitting somehow involves "new combinations" of network elements is factually incorrect.

B. The FCC's Recent *Line Splitting Order* Confirms The Fact That Line Splitting Does Not Require A New Combination Of Network Elements.

The FCC's recent *Third Report and Order on Reconsideration* in CC Docket No. 98-147 and *Fourth Report and Order On Reconsideration* in CC Docket No. 96-98, adopted and released January 19, 2001 (hereinafter *Line Splitting Order* or *Line Sharing Reconsideration Order)* confirms the fact that requiring Ameritech to provide line splitting, *either with an ILEC-owned splitter or a CLEC-owned splitter*, does not require Ameritech to provide a new combination of network elements. The *Line Splitting Order* clearly requires Ameritech to provide line splitting to UNE-Platform CLECs using the *same unbundled loop* to provide both voice and data service where the CLEC provides the splitter. In that Order, the FCC clarified that ILECs have an existing obligation under

current rules to permit competing UNE-Platform CLECs to self provision or partner with a data carrier to provide voice and data service *using the same unbundled loop*. *Line Splitting Order*, ¶¶16, 18. As the FCC made clear, when a UNE-Platform voice provider orders an xDSL capable loop for line splitting, the ILEC must provide the same loop that was part of the existing UNE-Platform as the unbundled xDSL-capable loop (*Line Splitting Order,* ¶19), confirming the fact that the loop and port provided *after* line splitting is the same loop and port combination that existed *prior* to engaging in line splitting. Significantly, the FCC's recent *Line Splitting Order* was issued *after* the Eighth Circuit's most recent *IUB III* decision. Thus, the FCC's *Line Splitting Order* conclusively establishes that requiring Ameritech to provide line splitting does not violate the federal Act or the *IUB* line of cases, contrary to the Order's erroneous conclusion.

In any event, because the FCC's recent *Line Splitting Order* clearly confirmed the fact that Ameritech is currently required to provide line splitting to CLECs providing their own splitters, the issue of "new combinations" need not -- and should not -- be reached in this case. Rather, the Commission should appropriately defer the issue of "new combinations" to the Ameritech TELRIC compliance docket, ICC Docket No. 98-0396.

C. UNE Combinations Issues Are Appropriately Being Addressed In ICC Docket No. 98-0396.

As discussed above, providing CLECs with the ability to engage in line splitting does not require Ameritech to provide a "new combination" of network elements. The FCC recently clarified *after the IUB and Verizon v. Strand decisions cited in the Order* that Ameritech is, in fact, required to provide line splitting, at least in those instances

where the CLEC self-provides the splitter or partners with a data CLEC that owns a splitter. Thus, requiring Ameritech to provide CLECs with the ability to engage in line splitting is consistent with federal law and the *IUB* line of cases and does not constitute a "new combination." Accordingly, there is no need for the Commission to address "UNE combinations" issues here.

At best, the Commission's Order is a gratuitous declaratory ruling on an issue that was not addressed anywhere in the evidentiary record. Because the "new combination" defense was not raised by Ameritech until it filed its initial post-hearing brief, the evidentiary record in this case is devoid of evidence concerning the devastating competitive impact such a conclusion would have, for example, on new customers and customers desiring second lines to their homes and businesses, who would effectively be deprived of a choice of local service providers.

The evidentiary record on this issue *is* complete, however, in ICC Docket No. 98-0396. In that docket, the issue of whether this Commission can and/or should require Ameritech to provide combinations of network elements it ordinarily combines in its network was discussed at length in the testimony of the Ameritech, AT&T and WorldCom witnesses. During cross examination in that docket, Ameritech acknowledged that to the extent CLECs are unable, under Ameritech's current combinations tariff, to provide service over lines to new customers or to provide existing customers with additional lines using the UNE-Platform (because, according to Ameritech, these are "new combinations"), Ameritech will readily agree to serve those new customers and additional lines. ICC Docket No. 98-0396, Tr. 258, 266-268 (October 23, 2000).

The issue of "ordinarily combined" elements was also briefed extensively in that docket, and the CLECs discussed the anticompetitive and nonsensical result that would occur should new customers and those requiring additional lines be deprived a choice of local service provider because, as chance would have it, there is no pre-existing loop and port combination currently in place to provide service using the UNE-Platform. Indeed, there is no legitimate reason, either legally or as a matter of policy, to deny residential and small business customers who move across town, move into the area or order an additional line a choice of local service providers simply because the elements needed to serve them are not already connected in the network. As Ameritech's own publicly available annual report reveals, this market segment – the one that would be denied the benefits of competition -- is significant. In its annual report issued in 1998, Ameritech reported that local service revenues increased 8.6% in 1996, "due to increased calling volumes, which resulted primarily from 3.4% growth in the number of access lines in service, attributable to residential second line additions, as well as increased business usage." ICC Docket No. 98-0396, MCI WorldCom Ex. 3.0, p. 10. This docket is fully briefed and the parties are awaiting a Hearing Examiner's Proposed Order.

Thus, the Commission would be ill-advised to determine the issue of whether Ameritech is required to provide "ordinarily combined" network elements to CLECs in this docket. Rather, it should decide in this case that Ameritech is required to provide line splitting in conjunction with UNE-P, and defer issues concerning the extent to which it must provide combinations (*i.e.*, "existing" versus "new" versus "ordinarily combined") until its Order in ICC Docket No. 98-0396, where they have been fully litigated in the testimony and briefs. In sum, because the issue of "ordinarily combined"

elements is not one the Commission needs to decide, is not properly presented on this record and is more appropriately resolved in ICC Docket No. 98-0396, the Commission should not prejudge that issue here, and should refrain from making any findings or conclusions regarding "new combinations" in this docket.

D. This Commission Is Not Preempted By The Federal Act Or Other Federal Law From Requiring Ameritech To Provide New Combinations.

Even if requiring Ameritech to provide line splitting could, under any strained interpretation of the facts and the law, be construed as requiring Ameritech to provide new combinations (which, as AT&T strenuously contends, it cannot), this Commission is not bound by the Eighth Circuit Court of Appeals' interpretation of the federal Act and can, *consistent with the federal Act, require Ameritech to provide new combinations of network elements.* Notwithstanding the Eighth Circuit's decision invalidating FCC Rule 315(c) in *IUB III*, which the Supreme Court has agreed to review, state commissions are free to act based on their own interpretations of the Act, and to exceed the scope of current FCC regulations on UNE combinations, as many other courts and state commissions have done.

The Eighth Circuit's interpretation *of the Act* (as distinguished from the FCC's regulations pursuant to the Act) controls only within the Eighth Circuit. Thus, while the Eighth Circuit's invalidation of Rule 315(c) is binding pursuant to the Hobbs Act (pending Supreme Court review), its interpretation of *the Act* is not. Nothing in the Hobbs Act (or, for that matter, any other legal authority) elevates the Eighth Circuit Court of Appeals to the level of the Supreme Court for purposes of this case and forbids other authorities from reaching different conclusions about the Act's meaning. Thus, the Order

incorrectly concludes that the Eighth Circuit's Hobbs Act designation somehow prevents it from interpreting the Act differently from the Eighth Circuit Court of Appeals. (Order, p. 52). The Order also fails to acknowledge that the Seventh Circuit, of which Illinois is a part, has not reached this issue and that the Eighth Circuit's interpretation of the federal Act regarding network element combinations is not binding beyond the Eighth Circuit.

Nor does the Order give due credence to the majority decisions of the other Circuit Courts of Appeal that have reached a contrary result from the Eighth Circuit. Both the 5th and the 9th Circuit Courts of Appeal have found that while the 1996 Act may not *require* ILECs to provide access to new combinations of network elements, nothing in the Act *prohibits* state commissions from ordering incumbents to provide access to new combinations. The United States Supreme Court has denied petitions for *certiorari* on the two Ninth Circuit decisions permitting new combinations. *See MCI Telecomms. Corp. v. U S West Comms.,* 204 F.3d 1262 (9th Cir. 2000), *cert. denied,* 121 S. Ct. 504 (Nov. 13, 2000); *U.S. West Comms. v. MFS Intelenet, Inc.*, 193 F.3d 1112 (9th Cir. 1999), *cert. denied,* 120 S. Ct. 2741 (Jun. 29, 2000); *Southwestern Bell Tel. Co. v. Waller Creek Comms.*, 221 F.3d 812 (5th Cir. 2000). Nowhere does the Order specifically address, much less distinguish, these Court of Appeals decisions – decisions that are directly at odds with those of the Eighth Circuit in the *IUB* line of cases.

The Order also fails to account for the fact that the procedural history of the *Iowa Utilities Board* cases involves numerous stays, reversals on appeal and remand, and that the United States Supreme Court has granted the FCC's petition for *certiorari* on the Eighth Circuit's invalidation of FCC Rule 315(c) in *IUB III* and, thus, the issue of requiring ILECs to combine network elements. In simple terms, the Eighth Circuit

initially invalidated FCC Rules 315(b) and Rule 315(c) in 1997 in its *IUB I* decision. *Iowa Utils. Bd. v. FCC*, 120 F.3d 753, 813 (8th Cir. 1997) (subsequent history omitted)(*"IUB I")*. The United States Supreme Court granted *certiorari* on the Eighth Circuit's invalidation of Rule 315(b) – but not Rule 315(c) – and reversed the Eighth Circuit's invalidation of Rule 315(b) and remanded the case to the Eighth Circuit in 1999. *AT&T Corp. v. Iowa Utils. Bd.*, 525 U.S. 366, 394-395 (1999)(*"IUB II)*. During the summer of 2000, the Eighth Circuit, on remand, again invalidated Rule 315(c) in *IUB III*, which decision the Supreme Court has agreed to review during its October 2001 term. *Iowa Utils. Bd. v. FCC*, 219 F.3d 744 (8th Cir., July 18, 2000)(*"IUB III")*. Thus, the Order's apparently steadfast reliance on the Eighth Circuit's decisions in *IUB I* and *IUB III* is misplaced.

The only other decision the Order references is a Michigan federal district court decision of *Verizon North, Inc. v. Strand*, No. 5:98-CV-38 (W.D. Mich. Dec. 6, 2000). Again, this decision is a federal district court decision that is not controlling legal authority in this state and is not legally binding upon the Commission. In addition, the Michigan Commission has appealed the *Verizon v. Strand* decision to the Sixth Circuit Court of Appeals in Docket No. 01-1013. Moreover, the state commission decisions in the recent AT&T arbitrations in Wisconsin and Indiana, relied upon in the Order at p. 56, have recently determined that these state commissions have the authority to require Ameritech to provide network element combinations consistent with the federal Act.

1. A Reasonable Reading of FCC Rule 315(b) Compels The Conclusion that Ameritech is Currently Obligated to Combine UNEs Ordinarily Combined in its Network.

A reasonable reading of Rule 315(b) can encompass requiring Ameritech to combine UNEs that it currently combines, even if they are not yet specifically connected. FCC Rule 51.315(b), 47 C.F.R. 51.315(b), as definitively construed by the FCC in its *First Report and Order*, and affirmed by the United States Supreme Court, continues to have the same meaning and effect it had when the FCC adopted it in 1996. In its *First Report and Order*, the FCC concluded that ILECs should be required to combine elements when technically feasible to do so at the request of CLECs, because CLECs often are not able to combine them for themselves.[11] The rules enforcing this obligation clarified that this obligation existed in two distinct situations: when the elements are "ordinarily combined" in the ILEC network, and when the elements are not ordinarily combined.[12] The former obligation is set out in Rule 51.315(b), and the latter, which potentially involved claims that the requested combinations were not technically feasible, in Rules 51.315(c)-(f). The actual language used in Rule 51.315(b) was that ILEC was required to combine elements that it "currently combines."

In ¶296 of the *First Report and Order*, the FCC first explained that "currently" was intended to mean "ordinarily." That explanation was hardly necessary; this understanding of "currently combines" is clear enough from the context of the rule itself. On its face, Rule 51.315 distinguishes between the types of combinations that ILECs "currently combine," *see* Rule 51.315(b), and those the ILECs do <u>not</u> "ordinarily"

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11 *First Report and Order* at ¶¶ 292-297.

12 *Id.*

combine, *see* Rule 51.315(c). The FCC distinguished between these two types of combinations because only the latter raised issues of technical feasibility -- there is no question that a combination that currently or ordinarily exists in the ILECs' networks is technically feasible. Therefore only truly new types of combinations (i.e., those that the ILEC does not ordinarily combine in its own network) were intended to be addressed in Rules 51.315(c) - (f), which contain the rules to address claims of technical infeasibility. Combining elements that are currently or ordinarily combined in the ILEC network (a loop and a port, for example) raises no issues of technical feasibility, and plainly is meant to be addressed in Rule 51.315(b), and not in the technical feasibility Rules 51.315(c)-(f).

The Eighth Circuit's decision to vacate Rule 51.315(b) was reversed by the Supreme Court and the rule was reinstated. The question of the validity of FCC Rules 51.315(c) - (f) was addressed by the Eighth Circuit in its July 18, 2000 decision in *Iowa Utilities Board v. FCC*, 219 F.3d 744 (8th Cir. July 18, 2000) ("*IUB III*"). As discussed below, the Eighth Circuit's *IUB* decisions do not hold that requiring ILECs to combine elements not ordinarily combined in their networks violates the federal Act – it simply found that the federal Act does not *compel* such a requirement.

Thus, to the extent that requiring Ameritech to provide line splitting can, under any reasonable scenario, be construed as requiring Ameritech to combine network elements (which, as AT&T contends, it cannot), there is no dispute that these elements would be elements Ameritech currently or ordinarily combines in its network to engage in line sharing, which is technically identical to line splitting. As such, requiring Ameritech to combine such elements is consistent with the federal Act and FCC Rule 315(b).

2. The *Iowa Utilities Board* Line of Cases Does Not Preclude This Commission From Requiring Ameritech To Provide New UNE Combinations Under Either State Or Federal Law.

Even if 47 C.F.R. 315(b) did not already require Ameritech to combine UNEs ordinarily combined in its network, which it does, it is clear that the Commission has the authority to require Ameritech to combine UNEs in any event, *consistent with the federal Act*. According to Ameritech, it is not required to provide UNE combinations not "currently combined" (as Ameritech defines it) in its network because the federal Act, as interpreted by the Eighth Circuit in *IUB I* and *IUB III*, cannot be read to require Ameritech to provide UNEs that are "ordinarily combined" or, for that matter, any UNE combinations where specific facilities are not already combined in its network because, as Ameritech Illinois contends, CLECs want Ameritech Illinois to affirmatively combine UNEs at the CLECs' request.

Certainly the *IUB III* decision relied upon by the Order has not changed Ameritech's obligation to offer UNE combinations. *IUB III* simply has no limiting effect on the Commission's ability to require Ameritech to offer combinations of network elements ordinarily or generically combined in its network. The effect of the Eighth Circuit's decision can be stated simply. It vacated rules of the FCC that, while in effect, bound state commissions and constrained their decisions regarding UNE combinations and pricing. Notwithstanding *IUB III*, state commissions such as this one remain free to act based on their own interpretations of the Act, and to exceed the scope of current FCC regulations on UNE combinations. Indeed, Section 261(c) of the Act (and numerous of its other provisions) expressly provides that states may impose pro-competitive requirements *in addition to the Act's minimum requirements.* Thus, state commissions

have the authority to order new combinations, and nothing in the federal Act prohibits them from doing so.

The Eighth Circuit's interpretation *of the Act* (as distinguished from the FCC's regulations pursuant to the Act) is controlling only within the Eighth Circuit. Nothing in the Hobbs Act or any other statute or legal principle elevates a regional court of appeals to the level of the Supreme Court for purposes of this case and forbids other authorities from reaching different conclusions about the meaning of the Act, just as they may do in any other case. Each state commission decision is subject to review in the appropriate federal district court and court of appeals. State commissions outside the Eighth Circuit are thus not bound by the *IUB I* and *IUB III* decisions, and their decisions will be upheld if an appropriate Court of Appeals disagrees with the Eighth Circuit's rulings.

Moreover, to the extent the Order bases its conclusion that Ameritech has no obligation to combine elements in a nondiscriminatory fashion on the rationale of the Eighth Circuit with respect to FCC Rules § 315(c)-(f), the Order is based upon a fallacy. When vacating rules §315 (c)-(f) (in *IUB I* in 1997), the Court of Appeals' decision was premised on the assumption that: (a) ILECs would prefer to grant competitors access to combine network elements themselves, and (b) the FCC's rules otherwise required the ILECs to perform unreasonable extra work. For instance, the Eighth Circuit emphasized that "the Act does not require the incumbent LECs to do <u>all</u> the work." *IUB I* at 813 (emphasis in original). The latter assumption is invalid by definition with respect to elements that are "ordinarily combined."

It is for these reasons that courts outside of the Eighth Circuit have recognized their obligation to apply what they believe to be the correct interpretations of the Act,

even when the Eighth Circuit has expressed a contrary view. For example, the Ninth Circuit upheld an interconnection agreement requiring US WEST to provide combinations of network elements despite the fact that the Eighth Circuit had struck down the FCC's rules upon which the state commission had relied in imposing the requirements. *MCI Telecommunications Corp. v. US WEST Communications*, 204 F.3d 1262, 1268 (9th Cir. 2000). In so holding, the Court observed:

> The Eighth Circuit's decision to vacate the FCC regulation certainly still stands, and is immune under the Hobbs Act from collateral attack. *See* 28 U.S.C. § 2342; *US WEST Communications v. MFS Intelenet*, 193 F.3d 1112, 1120 (9th Cir. 1999). All this means for the purposes of the present appeal is that the Act does not currently mandate a provision requiring combination. Our task is to determine whether such a provision "meets the requirements" of the Act, *i.e.*, to decide whether a provision requiring combination violates the Act.

Id. Finding the Eighth Circuit's interpretation of the Act unpersuasive, the Ninth Circuit ruled that *the state commission could mandate combinations under the Act*. *Id.* And US WEST's petition for certiorari, that erroneously claimed that the Ninth Circuit's decision was inconsistent with the Hobbs Act, was then denied by the Supreme Court. *See US WEST Communications, Inc. v. MFS Intelenet, Inc.*, 120 S. Ct. 2741 (2000).

Likewise, the federal district court in Colorado rejected the notion that the Eighth Circuit's construction of the Act precluded other courts from adopting a different interpretation. *US WEST Communications, Inc. v. Hix*, Civ. Action No. 97-D-152, slip op. (D. Co. June 26, 2000). Like the Ninth Circuit, that court held that the fact that the Eighth Circuit had vacated certain FCC rules "does not compel the conclusion that" interconnection agreements incorporating those rules "are prohibited by the Act." *Id.* at 14. "Instead, the Court must question whether the interconnection agreements . . . are

consistent with the Act, independent of [the FCC's rules]." *Id.* Moreover, on August 28, 2000, that court denied US WEST's motion to alter the judgment on the basis of the Eighth Circuit's decision on remand in *IUB III*, correctly recognizing that the latter decision "is not a change in controlling legal authority." *US WEST Communications v. Hix*, Civ. Action No. 97-D-152, Order Denying Motion to Alter or Amend Judgment (D. Co. Aug. 28, 2000).

In addition, the U. S. Court of Appeals for the Fifth Circuit has held that state commissions are not precluded by the Act from requiring ILECs to provide combinations of elements not ordinarily combined in the ILECs' networks. *Southwestern Bell Telephone Co. v. Waller Creek Communications, Inc.*, 2000 WL 1091669 (Aug. 21, 2000 5th Cir.).

Each of these federal court decisions was issued *after* the FCC rules that had required ILECs to combine separate elements not ordinarily combined in the ILEC's network were vacated by the Eighth Circuit. The Fifth Circuit issued the *Waller Creek* decision after the Eighth Circuit's recent decision in *IUB III*. The *Waller Creek* Court made clear that the Eighth Circuit decision had no bearing on the authority of commissions outside the Eighth Circuit to order ILECs to combine network elements not currently combined in ILEC networks. In rejecting the notion that such a requirement would somehow violate the Act, the *Waller Creek* Court held:

> Further there is nothing "illegal" about the provision requiring SWBT to combine network elements for Waller or any other CLEC. Nothing in the Telecommunications Act forbids such combinations. *Even if the Eighth Circuit's decision on this issue is correct - - which we do not decide today - - it does not hold that such arrangements are prohibited; rather, it only holds that they are not required by law.*

Waller Creek, 2000 WL 1091669, at *7 (emphasis added).

Moreover, in its recent Order in the AT&T/Ameritech Indiana arbitration requiring Ameritech to provide new combinations, the Indiana Commission, in discussing the effect of the *IUB* line of cases, concluded that rather than limiting the authority of state commissions, the *IUB* line of cases actually *expands* the authority of state commissions to require ILECs to provide UNE combinations to CLECs:

> Although the *IUB* cases served to vacate certain aspects of Rule 51.315, this line of cases does not effect our authority to require Ameritech Indiana to provide additional combinations of UNEs to AT&T.
>
> * * * * *
>
> The *IUB* line of cases determined that the FCC exceeded its authority when it determined that all ILECs would be required to provide UNE combinations at the request of the CLECs. *This line of cases does not limit a state commission's authority to order an ILEC to combine network elements at the request of a CLEC in order to encourage competition in the local exchange market.*
>
> * * * * *
>
> Like the Ninth Circuit, we are persuaded that we have the discretionary authority to require an ILEC to provide combinations of network elements to CLECs. {footnote omitted} The effect of the *IUB* line of cases and its progeny is to *expand the authority of state commissions, not to limit them.* The Eighth Circuit, finding that the FCC exceeded its authority in promulgating Rule 51.315, returned to state commissions the authority to require ILEC's to combine UNEs at the request of CLECs so long as such action comports with the purpose of the Act and assists in breaking down the entry barriers into the local exchange market. *See MCI Telecom.*, 204 F.3d at 1268.

Indiana Utility Regulatory Commission Order, Cause No. 40571-INT-03, pp. 46-47 (Nov. 20, 2000)(emphasis supplied). The Indiana Commission recently reaffirmed this conclusion in its January 18, 2001 *Order on UNE Tariff, In the Matter of the Commission Investigation and Generic Proceeding on Ameritech Indiana's Rates for Interconnection*

Service, Unbundled Elements, and Transport and Termination Under the Telecommunications Act of 1996 and Related Indiana Statutes, Cause No. 40611 (Jan. 18, 2001). The Wisconsin Commission also determined in its recent AT&T/Ameritech Wisconsin arbitration decision that it had state law authority to order Ameritech Wisconsin to combine UNEs for CLECs. *See* Arbitration Award, *Petition for Arbitration to Establish an Interconnection Agreement Between Two AT&T Subsidiaries, AT&T Communications of Wisconsin, Inc. and TCG Milwaukee, and Wisconsin Bell, Inc. (d/b/a Ameritech Wisconsin),* Docket No. 05-MA-120 (October 12, 2000) at 21-22.

Even under the erroneous assumption that line splitting requires Ameritech to provide combinations of network elements ordinarily combined in its network, then, this Commission can, consistent with the federal Act, order Ameritech to provide these network element combinations. Thus, the Commission should, on rehearing, eliminate the erroneous conclusion that federal law preempts it from requiring Ameritech to provide "new combinations of network elements."

III. THE ORDER SHOULD EXPRESSLY DETAIL AMERITECH'S OBLIGATION TO PERMIT CLECS TO ENGAGE IN LINE SPLITTING USING THE UNE-PLATFORM.

The FCC's *Line Splitting Order* clearly requires Ameritech to facilitate line splitting when a CLEC provides its own splitter. As a point of clarification rather than rehearing, AT&T requests that the Commission detail Ameritech's line splitting obligations in its Order to eliminate any future disagreements regarding these obligations. In particular, the *Line Splitting Order* requires Ameritech to permit competing carriers providing voice service via the UNE-Platform to either self-provision or partner with a data carrier to provide voice and data service on the same unbundled loop. *Line Splitting*

Order, ¶¶16, 18. If a UNE-Platform provider is providing voice service and the end user wants to add data service, the *Line Splitting Order* requires Ameritech to provide the CLEC with the same loop that is part of existing UNE-Platform, assuming it is xDSL-capable. *Id.* at ¶19.

The *Line Splitting Order* also requires Ameritech to make all necessary system modifications to facilitate line splitting, including the provisioning of nondiscriminatory access to OSS for pre-ordering, ordering, provisioning, maintenance and repair, and billing for loops used in line splitting arrangements, and Ameritech must perform all central office work necessary to deliver unbundled loops and switching to a competing carrier's collocated splitter to facilitate line splitting. *Id.* at ¶20. The *Line Splitting Order* also made explicit that the obligation to provide line splitting is a current, existing obligation and, as such, Ameritech must allow competitors to order line splitting immediately, whether or not a fully electronic interface is in place. *Id.* n.36. In addition to providing OSS, the *Line Splitting Order* also strongly encourages ILECs to provide streamlined processes and procedures for line splitting, such as a single-order process for adding xDSL service to a UNE-Platform loop (*Id.* at ¶21) and streamlined ordering processes for migrations between line sharing and line splitting that *avoid* voice and data service disruption and make use of the existing xDSL-capable loop. *Id.* at 22.

The Order's level of detail regarding Ameritech's obligation to provide line splitting pursuant to the FCC's *Line Splitting Order* is scant, at best. At page 52, the Commission acknowledges that Ameritech is required to and has agreed to provide access to the HFPL over the UNE-P when it is not the voice provider. At page 57, the Order states that it "fully expect[s] Ameritech to undertake the engineering and office

upgrades necessary to comply with the FCC's requirements for OSS in conjunction with FCC ordered line splitting." This is hardly the sort of detailed mandate that the Commission has surely learned is minimally required to avoid future disputes regarding the extent of Ameritech's obligations. Rather, the Commission should err on the side of particularity and, on rehearing, revise the Order to detail the above obligations.

Because the FCC stated that line splitting is a "current" obligation on the part of the ILECs, Ameritech should be expressly required to provide terms and conditions, pre-ordering and ordering requirements (including related OSS modifications), and procedures for necessary central office work, such that CLECs may readily accomplish any of the following basic transactions: (1) convert an Ameritech retail voice customer to CLEC-provided voice service using the UNE-Platform and CLEC-provided data service using the HFPL; (2) add CLEC-provided data service for a customer to whom AT&T provides voice service over the UNE-Platform; and (3) convert the voice and/or data service of a customer who receives voice service from Ameritech and data service from Ameritech's data affiliate or a data CLEC using line sharing to AT&T (i.e., CLEC)-provided voice and data service over the same network configuration. This latter scenario constitutes migrating an existing line sharing arrangement to line splitting and, as the FCC stated in its *Line Splitting Order*, should require "no central office wiring changes" such that "voice and data service disruption" is avoided. *Id.* at ¶22. In this scenario, Ameritech is thus required to preserve the existing splitter functionality in the transition from line sharing to line splitting to avoid wiring changes and service disruption. The Commission should, on rehearing, make these requirements explicit and

effective immediately and should also make the above-stated goals explicit and set a date certain by which they must be attained.

IV. THE ORDER SHOULD REQUIRE AMERITECH TO PROVIDE THE SPLITTER AS PART OF THE LOOP FUNCTIONALITY.

While the FCC's *Line Splitting Order* addresses the ILEC's current and existing obligation to provide line splitting in instances where the CLEC or its data partner provides the splitter, the *Line Splitting Order* makes clear that whether ILECs are required to provide CLECs the ability to engage in line splitting with an ILEC-owned splitter is still an open issue that the FCC has yet to resolve. *Line Splitting Order,* ¶25. Specifically, the FCC expressly clarified that it has not yet addressed the issue of whether the splitter is a part of the "attached electronics" of the loop, but that it would resolve the issue expeditiously. *Line Splitting Order,* ¶25 (emphasis added).

To promote the FCC's goal of "further speed[ing] the deployment of competition in the advanced services market by making it possible for competing carriers to provide voice and data service offerings on the same line," (*Line Splitting Order,* ¶23), the Order should expand upon the FCC's admittedly minimum requirements by also requiring Ameritech to provide CLECs with the ability to engage in line splitting over a single unbundled loop *with an ILEC-provided splitter.* The Commission is free to conclude, as have various other state commissions, that the splitter is part of the "attached electronics" of the loop and, as such, Ameritech is required to provide it.

As the FCC has expressly determined, the unbundled loop includes the "attached electronics" necessary to access all features, functions and capabilities of the loop, with the exception of the DSLAM. *See UNE Remand Order,* ¶175. The splitter is part of the "attached electronics" of the loop because without it, a carrier cannot access all the

features, functions and capabilities of the loop, including the HFPL. Section 251(c)(3) of the federal Act requires Ameritech to provide "unbundled access" to UNEs, and "access" to a UNE refers to the "*means by which requesting carriers obtain an element's functionality* in order to provide a telecommunications service." FCC *First Report and Order* in CC Docket No. 96-98, ¶312. Unless it provides the splitter functionality, then, Ameritech cannot meet its obligation of providing unbundled *access* to the HFPL as required by the federal Act and the FCC's rules.

Adding the splitter to the loop is, in all technical respects, analogous to adding or removing other loop electronics such as bridged taps or load coils. The Order erroneously distinguishes the splitter from a bridged tap or a load coil, concluding that the splitter, unlike the bridged tap or load coil, does not prevent the transmission of data services. According to the Order, while the bridged tap or load coil affects the loop's transmission of data services, the splitter "is a passive device that does nothing to the loop itself." Order, p. 54. This conclusion is nonsensical because, without the splitter, the loop cannot transmit data services at all. As even Ameritech admits, the splitter is necessary to access the HFPL in order to provide for data services. Tr. 697. In either case, the removal or attachment of filtering devices that are necessary to enable voice and data transmission over a single loop simply gives effect to the FCC's determination that Section 251(c)(3) of the Act requires ILECs to provide modifications to their facilities to the extent necessary to accommodate access to network elements. FCC *First Report and Order*, CC Docket 96-98, ¶198. Thus, the Order's conclusion that the splitter does nothing to the loop itself is factually incorrect and ignores the reality that the splitter is,

indeed, part of the loop's attached electronics necessary to access the HFPL, an undeniable capability of the loop.

Moreover, AT&T's recent arbitration awards in Texas, Wisconsin and Indiana all conclude that the splitter is part of the attached electronics of the loop necessary to access the loop's full features, functions and capabilities. The Revised Arbitration Award in the arbitration between SWBT and Texas, approved by the Texas Commission on March 14, 2001, expressly concludes that "line splitting is necessary to gain access to the high frequency portion of the loop in order to allow AT&T to take advantage of the full functions, features, and capabilities of the loop" and that "consistent with the *UNE Remand Order*, … excluding the splitter from the definition of the loop would limit its functionality." *Revised Arbitration Award* dated September 27, 2000, p. 20 and *Order Approving Revised Arbitration Award* dated March 14, 2001, PUC Docket No. 22315 ("Revised Arbitration Award"). *See also* Public Service Commission of Wisconsin Arbitration Award in Docket 05-MA-120 (October 12, 2000), pp. 79-80 ("[t]he splitter can therefore be considered ancillary equipment that allows access to [the HFPL] functionality"); Indiana Utility Regulatory Commission Order dated November 20, 2000, Cause No. 40571-INT-03, pp. 67-68 ("We further find that a splitter is considered ancillary equipment that allows access to [the HFPL] functionality. A splitter shall be provided as ancillary equipment when requested to allow AT&T access to HFPLs.").

The Order also erroneously concludes that Ameritech's failure to provide the splitter for line splitting (yet agreeing to provide it for line sharing) is not discriminatory and that AT&T will not be competitively harmed if Ameritech does not provide the splitter. Order, pp. 54-55. The FCC's *Line Splitting Order* recognized the important role

that the availability of line splitting plays in enabling CLECs to compete effectively with Ameritech's combined voice and data offerings, particularly for residential and small business customers:

> We find that the availability of line splitting will further speed the deployment of competition in the advanced services market by making it possible for competing carriers to provide voice and data service offerings on the same line. As we found in the *Line Sharing Order*, these offerings are especially attractive to residential and small business customers. *At present, end users receiving voice service from competing carriers via the UNE-Platform may be unable to get xDSL service from a competing carrier without migrating their voice service back to the incumbent LEC. Line splitting, however, increases consumer choices by making it possible for carriers to compete effectively with the combined voice and data services that are already available from incumbent LECs and through line sharing arrangements.*

Line Splitting Order, ¶23 (emphasis added). Thus, the FCC recognizes the incentive for customers to keep their voice service with – or migrate it back to – the incumbent LEC in the absence of line splitting, as well as the need for line splitting in order for CLECs to compete effectively with Ameritech.

Ameritech's refusal to provide the splitter in the line splitting context (yet agreeing to do so for line sharing) would also create a powerful -- and entirely unnecessary -- incentive for data CLECs to partner with Ameritech rather than AT&T or other CLECs. Only Ameritech would be able to offer such data CLECs the benefits of a splitter that is owned, operated and maintained by the same entity (i.e., the incumbent) that is responsible for the remainder of the loop. Indeed, AT&T would be unable to partner with the majority of data CLECs who rely on Ameritech to provide the splitter because of Ameritech's refusal to provide the splitter unless it is also the voice provider. As the Texas Commission concluded, because "there is no technical distinction between line sharing and line splitting … it is discriminatory for SWBT to provide the splitter in a

line sharing context while not providing the splitter in a line splitting context. … SWBT's policy will have the effect of severely limiting the number of data CLECs with which a UNE-P provider can partner in order to offer advanced services." Revised Arbitration Award, p. 21. Thus, the Order should be revised on rehearing to require Ameritech to tariff line splitting with an ILEC-owned splitter to further facilitate the rapid deployment of voice and data services.

The Order also erroneously concludes that Ameritech's failure to provide line splitting with an ILEC-owned splitter does not impose unnecessary collocation requirements. Order, p. 54. The record evidence is to the contrary. To the extent a UNE-Platform CLEC wants to engage in line splitting with a data CLEC and that data CLEC is either unable or unwilling to collocate a splitter (because Ameritech already voluntarily provides it in all central offices in Illinois in which a data CLEC requests it), the UNE-Platform CLEC will have to provide and collocate the splitter. If Ameritech provides the splitter, however, the UNE-Platform CLEC is not required to collocate. As the Order itself recognizes, "collocation is expensive and entails considering (sic) planning and delays in provisioning as compared to the use of the line card." Order, p. 29. Thus, Ameritech's failure to provide an ILEC-owned splitter could require the UNE-Platform CLEC, who is not otherwise required to collocate, to embark on the expensive and time-consuming road to collocation in order to collocate a splitter.

WHEREFORE, AT&T respectfully requests that the Commission grant rehearing and clarification as requested herein and modify its March 14, 2001 Order in this docket consistent with the above-stated recommendations of AT&T.

Respectfully submitted,

AT&T COMMUNICATIONS OF ILLINOIS, INC.

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